

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF CALIFORNIA

William W. McClellan,

Petitioner,

No. CIV S 01-0847 DFL PAN P

vs.

Suzan Hubbard, et al.,

Respondent.

ORDER

Petitioner, a state prisoner proceeding pro se, has timely filed a notice of appeal of this court's September 26, 2005, denial of his application for a writ of habeas corpus.¹ Before petitioner can appeal this decision, a certificate of appealability must issue. 28 U.S.C. § 2253(c); Fed. R. App. P. 22(b).

A certificate of appealability may issue under 28 U.S.C. § 2253 "only if the applicant has made a substantial showing of the denial of a constitutional right." 28 U.S.C. § 2253(c)(2). The court must either issue a certificate of appealability indicating which issues satisfy the required showing or must state the reasons why such a certificate should not issue. Fed. R. App. P. 22(b).

¹ Petitioner submits evidence his notice of appeal was submitted to prison officials for mailing before the deadline expired, therefore the court deems the notice of appeal timely under the prisoner "mailbox" rule.

For the reasons set forth in the magistrate judge's April 15, 2005, findings and recommendations, petitioner has not made a substantial showing of the denial of a constitutional right. Accordingly, a certificate of appealability should not issue in this action.

IT IS SO ORDERED.

DATED: 6/9/2006

DAVID F. LEVI